

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. HICKORY WESLEY MCCOY, Defendant.	MEMORANDUM DECISION AND ORDER OVERRULING DEFENDANT’S OBJECTION TO MAGISTRATE JUDGE’S ORDER Case No. 2:12-CR-218 TS
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This matter is before the Court on Defendant Hickory Wesley McCoy’s Objection to the Magistrate Judge’s Order Denying Motion to Appoint New Counsel.¹

For non-dispositive pretrial matters, this Court reviews the Magistrate Judge’s orders under a “clearly erroneous or contrary to law” standard of review.² Under the clearly erroneous standard, this Court will affirm the Magistrate Judge’s ruling “unless it ‘on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’”³

¹Docket No. 173.

²28 U.S.C. § 636(b)(1)(A); Fed. R. Crim. P. 59(a).

³*Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

On August 27, 2013, Magistrate Judge Dustin B. Pead heard argument on Defendant's Motion to Appoint New Counsel and Motion to Continue.⁴ At the hearing, the Magistrate Judge heard from the Government, Defense Counsel, and the Defendant. After considering the parties' arguments, the Magistrate Judge found that Defendant was adequately represented by counsel and that Defendant's current counsel could effectively represent Defendant at sentencing. In light of those findings, the Magistrate Judge denied Defendant's Motion to Appoint New Counsel.


Defendant objects to the denial of his Motion to Appoint New Counsel on the grounds that the Magistrate Judge erroneously concluded that counsel for Defendant is and will continue to be effective in preparing for sentencing. Defendant complains specifically of the timing and quality of counsel's response to the presentence report prepared in this matter. Defendant raised the same concerns before the Magistrate Judge. Having reviewed the Magistrate Judge's ruling and Defendant's Objection thereto, the Court is not left with the definite and firm conviction that a mistake has been committed. Accordingly, Defendant's Objection will be overruled.

It is therefore

ORDERED that Defendant's Objection to the Magistrate Judge's Order Denying Motion to Appoint New Counsel (Docket No. 173) is OVERRULED.

DATED September 5, 2013.

BY THE COURT:



TED STEWART
United States District Judge

⁴See Docket No. 170.